IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No.97 of 2004

Sri Heera Singh S/o Sri Harsh Singh
R/o Village Bhilgar P.O. Bhagtola
Distt. Almora presently C/o Sri G.S. Bora
Village Falya (Arjun Rath) P.O. Someshwar
Distt. Almora

... Appellant/Petitioner

Vs

1. State of Uttaranchal through Director General of Police, Uttaranchal Dehradun
2. Inspector General Police, Dehradun
3. Dy. Inspector General of Police, Garhwal Range Pauri
4. Superintendent of Police, Pauri

... Respondents

Sri S.N. Babulkar, learned counsel for the appellant
Sri K.P. Upadhyaya, learned standing counsel for the respondents

Dated: July 6, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This special appeal has been filed by the appellant against the judgment and order dated 5.11.2004 passed by learned Single Judge of this Court in WPSS No.4404 of 2001 by which the writ petition of the petitioner was dismissed.

Briefly stated facts of the case are that the appellant/petitioner was initially appointed as a Constable on 2.1.1974 with the U.P. Police at Nainital. Subsequently, he was posted at Pithoragarh in the year 1983 and thereafter in Tehri Garhwal in 1990. Lastly, he was performing his duties in District of Pauri Garhwal since 1994. On 1.4.1999, the appellant/ petitioner was allegedly implicated in a case and crime

No.244 of 1999 registered at P.S. Srinagar u/s 34 of Police Act with the allegations that while on duty as Treasury Guard on 1.4.1999 at 9:00 PM., the petitioner was allegedly found in a drunken state, making nuisance, shouting loudly and using abusive language. On the said charge, the petitioner was placed under suspension by S.P. Pauri Garhwal and a preliminary enquiry was directed against the appellant/petitioner and in the preliminary enquiry, a departmental enquiry was recommended against the appellant/petitioner. However, after preliminary enquiry, the suspension order passed against the appellant/petitioner was revoked. The inquiry report was submitted against the appellant/petitioner by the Dy. Superintendent of Police holding the appellant/petitioner guilty. The Superintendent of Police on the basis of inquiry report dismissed the appellant/petitioner from service vide order dated 25.4.2000. Against the said order, the petitioner preferred departmental appeal before appellate authority who upheld the punishment and dismissed the appeal vide order dated 18.6.2000. the petitioner also made a revision before the I.G. Meerut Zone, Meerut, but to no avail. Meanwhile, the petitioner was acquitted from the charge leveled against him under section 24 of Police Act in Criminal Case No.244 of 1999. Against the order dated 25.4.2000, the petitioner preferred a writ petition before this Court. The learned Single Judge after perusing the entire material on record dismissed the petition of the petitioner and confirmed the impugned order in the petition.

We have heard learned counsel for the parties and perused the entire material on record.

Learned counsel for the appellant/petitioner submitted that the petitioner was acquitted by the Judicial Magistrate, Srinagar from the charge punishable under Section 24 of Police Act, 1861, and submitted that the petitioner has wrongly been found guilty by the departmental authorities. Learned Single Judge in his judgment has recorded a finding that the principles of Evidence Act, 1872 are not strictly required to be adhered by the departmental authorities and as such merely for the reason that the charge was not proved in the court beyond reasonable doubt, it cannot be said if the conclusions arrived at by the departmental authority are wrong on that ground alone. The petitioner was also given full opportunity to defend himself in the departmental inquiry.

Learned counsel for the appellant/petitioner further submitted that the petitioner was fully conscious at the time of Medical Examination at 11.05 P.M. on 1.4.1999. The learned single judge has rightly recorded the finding in his judgment that in the medical report it is clearly mentioned *"Breathing smell alcoholic"* and as such the report read with said sentence in the report corroborates the conclusions of the departmental authorities. The learned single judge in its judgment has quoted the service record of the petitioner which shows punishment in his character roll. In the year 1995, the petitioner was censured for negligence in duty in District Nainital. In the year 1981, the petitioner was punished by 7 days P.D. for unauthorized absence. In the year 1982, for another unauthorized absence in the same District punishment of 7 days P.D. awarded. Again in the year 1982, when the petitioner was posted in District Pithoragarh, he

was awarded 7 days yet another P.D. for changing the date of remand of the accused. In the year 1987 while on duty in Distt. Pithoragarh, he was found in drunken state and once again awarded punishment of 7 days P.D. In the year 1997, when the petitioner was posted in Pauri Garhwal, he was awarded 7 days P.D. there also for his absence. In the year 1998, four times the petitioner absented himself without unauthorized absence leave and each time awarded 7 days P.D. In the year 1999, again in District Pauli Garhwal, he was awarded 5 days P.D. for the absence from duty.

In view of the aforesaid circumstances, the learned Single Judge has rightly reached to the conclusion that the punishment of dismissal on the present charge relating to the incident of 1.4.1999 could not be said to be unjust and improper. Accordingly, the learned single judge dismissed the petition and affirmed the orders passed by the disciplinary authority.

We do not find any infirmity or illegality in the order passed by learned single judge of this court. The findings recorded by learned single judge are the findings of fact and do not call any interference of this Court. The special appeal having no force is hereby dismissed and the order passed by learned single judge dated 5.11.2004 is hereby affirmed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma,J.)**

Rajeev Dang